



September 18, 2002

Ms. Wendy Denson
Special Projects Unit
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2002-5264

Dear Ms. Denson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 168723.

The Williamson County Sheriff (the "sheriff") received a request for information relating to the requestor, including records concerning mental health and guardianship issues. The sheriff seeks to withhold information that involves child abuse and juveniles. We have considered your comments and have reviewed the information you submitted. We assume that the sheriff has released any other responsive information that was in existence when he received this request for information. If not, then the sheriff must release any such information at this time. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000). We note that chapter 552 of the Government Code does not require the sheriff to release information that did not exist when he received this request or to create responsive information. *See* Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Section 552.301 of the Government Code prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) provides that "[t]he governmental body must ask for the attorney general's decision and state the exceptions that apply . . . not later than the 10th business day after the date of receiving the request [for information]." Section 552.302 of the Government Code provides that "[i]f a governmental body does not request an attorney general decision as provided by Section 552.301 . . . the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information."

The submitted copy of the request for information reflects that the sheriff received the request on June 27, 2002. The sheriff did not request this decision within the ensuing ten business days, as prescribed by section 552.301(b) of the Government Code. Therefore, the requested information is presumed to be public and must be released under section 552.302,

unless there is a compelling reason to withhold any of the information from the public. *See also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). The presumption that information is public under section 552.302 can be overcome if the information in question is confidential by law or if third-party interests are at stake. *See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982).*

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ This exception encompasses information that another statute makes confidential. Section 261.201 of the Family Code provides in relevant part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). In this instance, the documents that relate to case numbers 99-05-00042 and C99-05-4813 consist of files, reports, records, communications, and working papers used or developed in an investigation made under chapter 261 of the Family Code. *See also Open Records Decision No. 440 at 2 (1986) (construing predecessor statute).* You have not informed this office of any rule adopted by the sheriff that would allow the release of these documents to this requestor. We therefore assume that no such rule exists. Given that assumption, we conclude that these documents are confidential in their entirety under section 261.201 of the Family Code. We have marked the submitted documents that section 261.201 makes confidential. The marked documents are excepted from public disclosure under section 552.101 of the Government Code as information made confidential by law.²

¹Unlike other exceptions to disclosure under chapter 552 of the Government Code, this office will raise section 552.101 on behalf of a governmental body, because the release of confidential information is a criminal offense. *See Gov't Code §§ 552.007, .352; Open Records Decision No. 325 (1982).*

²We note that a parent or other legal representative of a victim of alleged child abuse or neglect may be entitled to obtain portions of the requested information from the Texas Department of Protective and Regulatory Services. *See Fam. Code § 261.201(g).*

We note that one of the remaining documents contains a license plate number. Section 552.130 of the Government Code excepts from public disclosure information that relates to "a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130(a)(2). If the license plate number that we have marked is a Texas license plate number, then the sheriff must withhold that information from public disclosure under section 552.130(a)(2). We note, however, that information may not be withheld under section 552.130 from a person who has a special right of access to the information under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide her with information concerning herself). Thus, Texas license plate information may not be withheld under section 552.130 from a person who owns an interest in the vehicle to which the information pertains.

In summary, most of the submitted documents are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The sheriff must withhold a Texas license plate number under section 552.130, unless the requestor has a right of access to the license plate number under section 552.023. The sheriff must release the rest of the submitted information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body

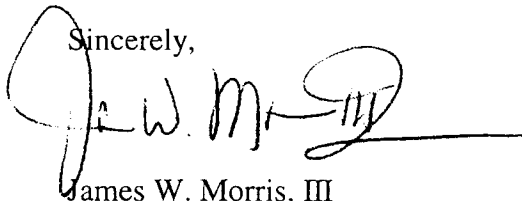
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 168723

Enc: Marked documents

c: Ms. Margaret van der Hagen
P.O. Box 614
Los Angeles, California 90078
(w/o enclosures)